

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

DRY CREEK COALITION and FUTUREWISE,

Petitioners,

v.

CLALLAM COUNTY,

Respondent.

CASE NO. 07-2-0018c

DETERMINATION ON REMAND

This matter came before the Board pursuant to a remand decision issued by the Court of Appeals of the State of Washington, Division II.¹

I. PROCEDURAL BACKGROUND

Clallam County's adoption of Resolution No. 77² in 2007 marked what the County believed was completion of its required RCW 36.70A.130 Growth Management Act (GMA) comprehensive plan and urban growth area reviews.³ The Resolution included findings that both its Comprehensive Plan and its UGAs remained GMA compliant, requiring no amendments. Futurewise and Dry Creek Coalition filed Petitions for Review. The Board's Final Decision and Order (FDO), issued on April 23, 2008, concluded the Capital Facilities Plan (CFP) for the Carlsborg UGA failed to comply with RCW 36.70A.070(3) due to

¹ *Clallam County v. Dry Creek Coalition*, 161 Wn. App. 366

² AR 13

³ Former RCW 36.70A.130(4) required the County to review its Comprehensive Plan every seven years while RCW 36.70A.130(3)(a) mandates UGA review every ten years. Clallam County had opted to simultaneously review both the Comprehensive Plan and UGAs.

1 inadequate sewer and police service plans.⁴ In addition, the Board held two rural residential
2 density zones were urban in nature.

3
4 The County appealed and the Clallam County Superior Court issued an opinion in which it
5 concluded the Board lacked jurisdiction to evaluate the Carlsborg UGA and reversed the
6 Board's decision regarding both the CFP adequacy and a County Code section which
7 allowed urban development prior to the provision of sewer service.⁵ That decision was in
8 turn appealed to the Court of Appeals, Division II. The decision of that court was filed on
9 April 20, 2011, remanding the matter to this Board.⁶ The Court of Appeals declined to issue
10 what it described as an advisory opinion regarding the rural residential zoning densities.⁷
11

12 Board member James McNamara conducted a telephonic conference on August 8, 2011,
13 during which the parties agreed to a briefing and hearing schedule.
14

15 A telephonic Hearing on Remand occurred on November 8, 2011, in which Board members
16 William Roehl, James McNamara and Nina Carter participated, with Mr. Roehl presiding.
17 The County was represented by Deputy Prosecuting Attorney Doug Jensen, Tim
18 Trohimovich appeared on behalf of Futurewise. Dry Creek Coalition was not a participant in
19 the remand.
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22 **II. JURISDICTION, STANDARD OF REVIEW,** 23 **AND SCOPE OF REMAND** 24 25

26 ⁴ "On the issue of the County's failure to provide for sewer service and other needed capital facilities and
27 services to the Carlsborg Urban Growth Area (UGA) . . . and failure to review and revise the Comprehensive
28 Plan (CP) to plan for sewer service to the Carlsborg UGA, the Board finds that the County has not adopted a
29 capital facilities plan compliant with the provisions of the GMA for providing sewers. The County cannot
30 provide sewer service to enable urban development at the time of development. Therefore, the Carlsborg UGA
31 is non-compliant with the GMA." Final Decision and Order at 2, 3 "The County has failed to show what police
32 facilities and services are needed and how these services will be funded to maintain the adopted LOS." Final
Decision and Order at 81.

⁵ Filed July 17, 2009

⁶ *Clallam County v. Dry Creek Coalition*, 161 Wn. App. 366

⁷ Id. at page 368, and page 388

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1 • **Board Jurisdiction**

2 The Board found in its FDO that it had jurisdiction in these proceedings.⁸ No question of
3 timeliness or standing was raised to the Court. Rather, the sole issue on remand involves a
4 factual determination on funding, a determination on which hangs the jurisdiction of this
5 Board.
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7 • **Scope of Remand**

8 Before the Court of Appeals, the County challenged the Board's subject matter jurisdiction
9 to review the County's CFP for the Carlsborg UGA, leading to the remand now before the
10 Board. That remand is very narrow. The Board's task is to determine whether or not the
11 State provided sufficient funding for a relevant GMA amendment as provision of that funding
12 was a condition precedent to local government compliance with the statutory amendment.
13 There are exceptions to the requirement that a party may only challenge adopted
14 comprehensive plans, development regulations and their amendments within 60 days of
15 publication of notice of adoption.⁹ Those exceptions were addressed by the Washington
16 Supreme Court in *Thurston County v. Western Washington Growth Management Hearings*
17 *Board* in which the court stated:
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20 A party may challenge a County's failure to revise a comprehensive plan
21 only with respect to those provisions that are directly affected by new or recently
22 amended GMA provisions, meaning those provisions related to mandatory
23 elements of a comprehensive plan that have been adopted or substantively
24 amended since the previous comprehensive plan was adopted or updated.¹⁰

25 In the instant case Clallam County adopted its Comprehensive Plan CFP in 2000 and did
26 not amend that plan as a result of its 2007 GMA review. CFP's are a mandatory
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30 ⁸ Final Decision and Order (April 23, 2008) at pg. 100. The jurisdictional issue involving adequate funding was
31 not raised by the County until it was before the Court of Appeals. As the Court stated, subject matter
32 jurisdictional challenges may be raised at any time.

⁹ RCW 36.70A.290(2)

¹⁰ 164 Wn. 2d 329, 344

comprehensive plan element.¹¹ In 2002, the legislature amended RCW 36.70A.070(3), adding a requirement that a CFP must also address park and recreation facilities:

RCW 36.70A.070:

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element. (amendatory language underlined)

It thus appears the legislature did, in fact, amend RCW 36.70A.070 subsequent to adoption of the County's CFP in 2000. However, the basis for the County's subject matter jurisdictional challenge and the Court of Appeal's remand is the existence of a "null and void" clause in that same 2002 legislation:

(9) It is the intent that new or amended elements required after January 1 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. **Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed** by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.(emphasis added)

The Court of Appeals directed the Board as follows:

¹¹ RCW 36.70A.070(3)

1 We remand to the Growth Board for a factual determination on whether the State
2 provided funding for a relevant GMA amendment, which would make the
3 amendment enforceable. Enforceability of this GMA amendment is a condition
4 precedent to establishing the Growth Board's jurisdiction to review the County's
5 unamended capital facilities plan.¹²

6 We remand to the Growth Board to determine whether the 2002 bill affecting the
7 capital facilities plan has ever been funded sufficiently to render the provision
8 enforceable.¹³

9 Because we, an appellate court, are not fact finders, we must remand to the
10 Growth Board for a determination on the sufficiency of state funding of the 2002
11 statutory changes.¹⁴

12 • **Standard of Review**

13 The County has asserted the Board lacks subject matter jurisdiction to review the Carlsborg
14 UGA's CFP and the public services available to that UGA. Determination of that legal issue
15 lies now with the Court of Appeals. The Board's task is to address a question of fact-
16 whether the County received sufficient funding. It is incumbent upon the challenging party,
17 Futurewise, to carry the burden of proof to establish the County's receipt of such funding.
18 Futurewise conceded at commencement of the remand hearing that it bore the burden of
19 proof.¹⁵

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22 The Board finds itself in uncharted territory as it typically reviews challenges pursuant to the
23 GMA of governmental actions, including adoption of comprehensive plans and development
24 regulations. Those actions are presumed valid upon adoption.¹⁶ In order to overcome that
25 presumption, Petitioners are required to demonstrate a jurisdiction's actions are clearly
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29 ¹² *Clallam County v. Dry Creek Coalition*, 161 Wn. App. 366, 373

30 ¹³ Id. at 385

31 ¹⁴ Id. at 386

32 ¹⁵ Both Futurewise and Clallam County agreed at the commencement of the November 8, 2011 hearing that
Futurewise bore the burden of proof.

¹⁶ RCW 36.70A.320(1)

erroneous in light of the goals and requirements of the GMA.¹⁷ In this instance, however, the Board concludes no “action” as contemplated by RCW 36.70A.320 is involved. That statute provides, in part, as follows:

RCW 36.70A.320

Presumption of validity — Burden of proof — Plans and regulations.

(1) Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

(2) Except as otherwise provided in subsection (4) of this section, **the burden is on the petitioner to demonstrate that any action taken** by a state agency, county, or city **under this chapter is not in compliance with the requirements of this chapter.**

(3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. . . **The board shall find compliance unless it determines that the action** by the state agency, county, or city **is clearly erroneous** in view of the entire record before the board and in light of the goals and requirements of this chapter.

In this instance the Board finds and concludes Futurewise must meet the preponderance of the evidence standard.

III. DISCUSSION AND ANALYSIS

Issue on Remand:

Whether the State, prior to December 1, 2002, appropriated and distributed sufficient funds to cover Clallam County’s costs associated with the 2002 legislation affecting the RCW 36.70A.070(3) capital facilities plan requirements?

Positions of the Parties:

¹⁷ RCW 36.70A.320(3)

1 Futurewise asserts sufficient funding was provided to include parks and recreation in the
2 CFP element, arguing the Record shows \$75,000 was disbursed to Clallam County in 2001-
3 2003 for that purpose. Futurewise makes extensive reference to a contract between CTED
4 and Clallam County by which the State provided that amount to the County to accomplish
5 specified tasks, including:

- 6 1. Identification of “ . . . any necessary revisions of the comprehensive plan . . . for
7 consistency with the GMA.” (Task 8)
- 8 2. Evaluation of the comprehensive plan . . . for compliance with the GMA. (Task 3,
9 Phase 1)
- 10 3. Analysis of other new laws, such as ESA listings, that might impact the
11 comprehensive plan. (Task 3, Phase II)
- 12 4. Evaluation and development of recommendations for the update of the Clallam
County CFP element. (Task 5)

13 It is Futurewise’s position the contract terms specifically obligated the County to review and
14 revise its Comprehensive Plan so as to comply with RCW 36.70A.130 and, among other
15 things, add parks and recreation to its CFP. It observes the new RCW 36.70A.130(3)
16 requirement to include parks and recreation in the CFP was passed on March 26, 2002 and
17 became effective on June 13, 2002. Futurewise then argues those dates preceded the June
18 15, 2002 deadline for completion of the Phase I GMA Update and Evaluation Report
19 required to be produced by the County under Contract No. s02-63000-034.¹⁸

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22 Futurewise argues email correspondence¹⁹ and a Declaration²⁰ admitted to the Record on
23 Remand do not support the County’s position that it received no such funding. Rather,
24 Futurewise states both those exhibits address a separate question, not that posed to the
25 Board by the Court of Appeals.

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28 Clallam County focuses at great length on the RCW 36.70A.130(8) amendment, which
29 required the addition of a parks and recreation **element** to jurisdictions' comprehensive

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¹⁸ IR 601

¹⁹ IR 609

²⁰ IR 610

1 plans, citing Finding 20 (H) of Clallam County Resolution No. 77, 2007.²¹ The County states
2 it did not receive funding to adopt nor did it revise a "park and recreation facilities element".
3 It also states it did not receive funding for reviewing such a "new plan element with all CPFS
4 (sic) of County".²²

5
6 To support its argument, the County observes the State, through Department of Community,
7 Trade and Economic Development (CTED)²³ employee Doug Peters, confirmed the County
8 had received no such funding.²⁴ To further buttress that assertion, the County points to the
9 declaration of Steve Gray, a senior planner employed by the County.²⁵ Clallam County
10 takes exception to Futurewise's interpretation of the Peters and Gray statements and also
11 observes the 2001-2003 contract was executed prior to passage and the effective date of
12 the RCW 36.70A.070 amendments. It points out the contract makes no mention of funding
13 for the addition of a park and recreation facilities element and, finally, that state funding
14 referenced by Futurewise, but provided subsequent to December 1, 2002, is irrelevant to
15 the Board's inquiry.
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18 In response to Futurewise's argument that funding was provided for the RCW 36.70
19 A.070(3) requirement, the County takes the position that even if that were true, RCW
20 36.70A.070(9) requires the park and recreation facilities portion of the CFP element must be
21 consistent with and concurrently adopted with the new park and recreation comprehensive
22 plan element.²⁶ That is, the County takes the position that both the RCW 36.70A.070(3) and
23 the RCW 36.70A.070(8) amendments had to have been funded and then adopted
24 concurrently and there was no funding received for the RCW 36.70A.070(8) requirement.
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28 ²¹ Finding 20 (H): "Parks and Recreation Element. The Legislature did not distribute funds sufficient to cover
29 local government costs for preparing Parks and Recreation element by December 1, 2002. Therefore, this
30 requirement is inapplicable.

31 ²² Clallam County's Response Brief, pg. 4.

32 ²³ CTED is now known as the Department of Commerce.

²⁴ IR 601

²⁵ IR 609

²⁶ RCW 36.70A.070(9), in part: "It is the intent that new or amended elements required after January 1, 2002,
be adopted concurrent with the scheduled update provided in RCW 36.70A.130."

1 **Board Analysis**

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3 The 2002 legislature adopted SSHB 2697, which had an effective date of June 13, 2002.
4 Included in the Bill were amendments to RCW 36.70A.070, a statute which sets forth the
5 required contents of a county or city comprehensive plan. More specifically, RCW
6 36.70A.070 lists a number of specific elements which must be included in a jurisdiction's
7 comprehensive plan. Those elements include land use, housing, capital facilities, utilities,
8 rural and a transportation element. With passage of the 2002 legislation, two entirely new
9 elements were added, an economic development element²⁷ and a park and recreation
10 element²⁸.
11

12
13 In addition to those two new elements, a clause was added to the housing element and, of
14 primary significance, the capital facilities plan element was amended to add the following
15 clause: "Park and recreation facilities shall be included in the capital facilities plan element."
16

17 The new parks and recreation element, codified as RCW 36.70A.070(8) states:

18 A park and recreation element that implements, and is consistent with, the capital
19 facilities plan element as it relates to park and recreation facilities. The element
20 shall include: (a) Estimates of park and recreation demand for at least a ten- year
21 period; (b) an evaluation of facilities and service needs; and (c) an evaluation of
22 intergovernmental coordination opportunities to provide regional approaches for
23 meeting park and recreational demand.

24 The Court of Appeals stated and directed the Board as follows:

25 The parties agree that Futurewise can bring a challenge to a County's failure to
26 revise a Plan with respect to those Plan elements for which there are recent
27 GMA's statutory amendments. **The parties disagree on whether the**
28 **legislature amended the GMA recently in a way that directly affects the**
29 **capital facilities plan element** of a county's Plan. (Citation omitted). **The**
30 **County argues, for the first time on appeal, that a lack of state funding**
31 **negates the effectiveness of language added in 2002 to the capital facilities**

32 ²⁷ RCW 36.70A.070 (7)

²⁸ RCW 36.70A.070 (8)
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1 **plan element subsection** of the GMA statute that details Plan requirements.
2 Although the legislature passed a bill amending the relevant statute in this case,
3 Laws of 2002, ch. 154, sec. 2, under the statute's plain language, the statutory
4 change is not enforceable in the absence of state funding because of a "null and
5 void" funding clause.²⁹ **We remand to the Growth Board to determine**
6 **whether the 2002 bill affecting the capital facilities plan has ever been**
7 **funded sufficiently** to render the provision enforceable.³⁰ (emphasis added)

8 The language of former RCW 36.70A.070(9) is unambiguous. Absent state
9 funding, the counties are not required to implement any changes to the GMA's
10 comprehensive plan requirements. **Because the parks and recreation**
11 **language to former RCW 36.70A.070(3) went into effect after January 1,**
12 **2002, whether the parks and recreation language addition to a Plan's**
13 **capital facilities element** became an enforceable requirement for the County to
14 consider and implement turns on whether the state has ever provided sufficient
15 funding.³¹

16 That directive only speaks to funding for the RCW 36.70A.070(3) amendment to the capital
17 facilities element and does not reference the newly added elements: RCW 36.70A.070(7)
18 [economic development], or RCW 36.70A.070(8) [parks and recreation]. The RCW
19 36.70A.070(3) amendment only requires that "Park and recreation facilities shall be included
20 in the capital facilities plan element" and nothing more.

21 Futurewise, in briefing and at oral argument, focused on review of the park and recreation
22 portion of the capital facilities element of the Clallam County Comprehensive Plan and on
23 whether funding was provided for the review effort; drawing the conclusion that such a
24 review would have required the County to include park and recreation facilities in its CFP.
25 The County, on the other hand, addressed funding for development of the new park and
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29 ²⁹ RCW 36.70A.130(9): It is the intent that new or amended elements required after January 1, 2002, be
30 adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any
31 such new or amended elements shall be null and void until funds sufficient to cover applicable local
32 government costs are appropriated and distributed at least two years before local government must update
comprehensive plans as required by RCW 36.70A.130.

³⁰ 161 Wn. App. 366, 384-385

³¹ Id. at 386

1 recreation element as well as on its position that both the RCW 36.70A.070(3) and the RCW
2 36.70A.070(8) amendments were required to be funded and adopted concurrently.

3
4 First of all, the Court did not direct the Board to determine adequacy of funding for RCW
5 36.70A.070(8), the new park and recreation element. The County's argument to the effect
6 that statute's addition of a park and recreation element is inextricably linked to RCW
7 36.70A.070(3) and its requirement to include parks and recreation in a CFP is not well
8 taken. A CFP which includes park and recreation facilities can exist on its own, just as other
9 capital facilities can, (provided they meet the internal consistency requirements of the RCW
10 36.70A.070 preamble), whether they be sewer or water lines, roads, storm water facilities,
11 flood control devices, and so on. At such time as the County were to adopt a new park and
12 recreation element pursuant to RCW 36.70A.070(8) it would merely need to ensure
13 consistency with the park and recreation portion of the capital facilities element. The Board
14 also rejects the County's position that the RCW 36.70A.070(3) and the RCW 36.70A.070(8)
15 amendments are required to be adopted concurrently under the language of RCW
16 36.70A.070(9). As Futurewise observes, the word "concurrent" in the first sentence of RCW
17 36.70A.070(9) modifies the clause "with the scheduled update"; the amendments could be
18 adopted separately, depending on provision of funding, but would be adopted in conjunction
19 with the County's scheduled comprehensive plan update.
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23 Neither can the Board accept Futurewise's argument which is directed at review of the park
24 and recreation portion of the capital facilities element. While the Court of Appeal's remand
25 decision directed the Board to focus on the capital facilities element, it was not a direction to
26 focus on the County's review of that element. Instead the question was whether or not
27 funding was appropriated and distributed to Clallam County for the purpose of incorporating
28 park and recreation facilities into the CFP.³²
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32 ³² IR 601, the email correspondence between the County and CTED only addresses the lack of state funding
for the new park and recreation and economic development elements required by SSHB 2697, not the

1 Thus, the Board looks to the record to ascertain whether or not the "2002 bill affecting the
2 capital facilities element has ever been funded sufficiently". As previously stated, the 2002
3 Bill's requirement was to include park and recreation facilities in the CFP. However, it
4 appears to the Board the Clallam County CFP included park and recreation facilities prior to
5 passage of SSHB 2697. The following is an excerpt from the County's Comprehensive
6 Plan³³: (Emphasis added)
7

8 **Clallam County Comprehensive Plan** 9 ***A Plan for the Future*** 10

11 ***Capital Facility Plans***

12 Capital Facility Plans (CFP) serve as an extension of the Comprehensive Plan.
13 A CFP guides County investment in developing new, or maintaining existing,
14 public facilities and services. Current County CFP's include:

- 15 • **1994 Clallam County CFP** (general plan)
- 16 • **Six-Year Park & Recreation Master Plan**
- 17 • Six-Year Fairgrounds Master Plan
- 18 • Six-Year Transportation Facility Plan
- 19 • Carlsborg UGA Capital Facilities Plan

20 **31.02.810 Capital Facilities Plan issues.**

21 The Capital Facilities Plan (CFP) is one element of Clallam County's
22 Comprehensive Plan that is required by the Growth Management Act. This
23 Comprehensive Plan coordinates land use elements with the capital facilities and
24 transportation elements. This internal consistency and coordination ensures that
25 the forecast of future needs is accurate, and that the land use element is
26 reassessed if funding falls short of meeting existing and future capital facilities
27 needs. Please refer to the transportation element for transportation system
28 improvements. **The full Capital Facilities Plan is hereby incorporated by
reference to this Comprehensive Plan as Appendix A.**

29 amendment of the capital facilities element; Similarly, IR 610, the Steve Gray Declaration, as well as
30 Resolution 77's Finding 20(H), only refer to a lack of funding for the new park and recreation element.

31 ³³ The Board takes official notice of the Clallam County Comprehensive Plan pursuant to WAC 242-03-630(4).
32 In addition, pursuant to a request from the Board made during the HOM, the County provided the Board with a
copy of the Clallam County Capital Facility Plan of June 1994. That Plan includes a section entitled "Parks and
Recreation and Open Space", beginning at page 92.

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1 The CFP is a twenty (20) year plan with a six (6) year financial element for
2 construction and maintenance of the County's capital facilities. The County
3 capital facilities covered in this Plan include roads, sewer, general administration,
4 courts, detention and corrections, law and justice, **parks, recreation and open**
5 **space**, flood control devices, solid waste and equipment maintenance facilities.
6 This plan does not include facilities owned and managed by other public entities,
7 such as the public utility district, schools, fire districts, etc. At such time as these
8 public entities complete inventories and set service levels, this chapter can be
9 amended to include those facilities. They will then be expected to go through the
10 committee process and the public hearing process to determine if they should be
11 added to this Plan.

12 The Capital Facilities Plan includes four (4) major steps: (a) an inventory of
13 existing capital facilities; (b) a forecast of the future needs; (c) proposed locations
14 and capacities of capital facilities; and (d) a six (6) year financing plan. . . .
15 Chapter [82.46](#) RCW authorizes counties and cities to impose an additional
16 excise tax on the sale of real estate to finance public facility construction. This
17 additional tax is authorized in two (2) increments of one-quarter of one percent of
18 the sale price. Clallam County adopted the first one-quarter of one percent in
19 1990 and has set aside funds for capital improvements. **Another new taxing**
20 **source which is considered for purchase of parks and open space lands is**
21 **the Conservation Futures Tax, Chapter [84.34](#) RCW This source is taxed on**
22 **all parcels of property at a rate up to \$0.0625 per \$1,000 assessed**
23 **valuation. . . .**

24 The State limits the use of development impact fees to only those system
25 improvements that are reasonably related to the new development, and
26 specifically only for public streets and roads, public **parks, open space and**
27 **recreation**, schools and fire protection facilities in areas that are not part of a fire
28 district. (Fire facilities are generally not eligible in most of Clallam County rural or
29 urban lands because the areas are part of a fire district.) Development impact
30 fees cannot be used to pay for getting existing facilities up to adopted standards,
31 or for operation and maintenance of the facilities. Development impact fees also
32 cannot be used as the sole source of funding new facility construction, but may
be used to "balance" other funding sources, such as property taxes.
The level of service summary shows that the County may expend up to
\$6,700,000 over the next six (6) years to maintain the level of services which
citizens now enjoy. Of these costs, revenue sources of \$1,380,000 have not
been identified, although \$1,100,000 may be eliminated by being able to use the
old Courthouse in the solution of office space. **There is also about \$2,000,000**
in parks and recreation which will be spent over the next twenty (20) years,

1 **not necessarily by the year 2000.** These facts bring the funded portion of the
2 Plan in line with revenues.

3 There is a problem with this positive outlook. There are no costs as of yet to
4 resolve the Jail prisoner separation problem. This is still in the analysis stage and
5 could be a significant impact on the Capital Facility Plan. One possible solution
6 for this problem lies in the reuse of the old Juvenile Facility which becomes
7 available in late 1994. The alternatives could range in cost from \$100,000 to over
8 \$1,500,000. This Plan is expected to be modified when this data is available.

9 The funding to make this Plan work includes the second one-quarter percent
10 local real estate excise tax as allowed under Chapter [82.46](#) RCW. This revenue
11 source would be in lieu of development impact fees. This presents a logical
12 method for financing the needed capital facilities without the negative aspect of
13 impact fees reducing development. **The other significant revenue source is**
14 **the use of conservation futures and bonds for the large expenditures in**
15 **park land. Thus, the people will have a say in the approval of those large**
16 **acquisitions which impact them the most and advance the park system the**
17 **most.** If funding sources are not realized, then either the LOS Standards will
18 have to be adjusted in recognition of the ultimate abilities of the County
19 resources, or limits on future development and land uses will have to be enacted.

20 Throughout the Capital Facilities Plan, noncapital alternatives are presented to
21 reduce the financial impact of needed capital facilities. It is expected that these
22 alternatives will lessen the imbalance in the financial resources of the plan. **Also,**
23 **not all of the park expenditures are necessary to accomplish the plan. Only**
24 **those which present the best opportunity for park enhancement will be**
25 **accomplished and thus some savings should be realized.**

26 **31.02.820 Goals of the Capital Facilities Plan.**

27 (1) Ensure that County public facilities necessary to support development shall
28 be adequate to serve the development at the time the development is available
29 for occupancy and use without decreasing current service levels below locally
30 established minimum standards.

31 See Table 12 for County public facilities which require concurrency with
32 development.

Table 12 – Concurrency Requirements

Facility	At Time of Development	Within Six (6) Years of Development with Financial Commitment	No Requirement
Parks and Recreation	No	Yes	N/A
Solid Waste	No	Yes	N/A
Sanitary Sewer	No	Yes	N/A
General Administration	No	No	No Requirement
Courts	No	No	No Requirement
Detention and Correction	No	No	No Requirement
Law and Justice	No	No	No Requirement
Flood Control Devices	Yes	N/A	N/A
Equipment Maintenance Facilities	No	No	No Requirement
Schools	No	No	No Requirement

This excerpt demonstrates the County's Comprehensive Plan already contained a parks and recreation element. The fact that the County's Capital Facilities Plan also included parks and recreation prior to the passage of the 2002 Bill is further supported by the contract between CTED and the County.³⁴ In a scope of work attachment to that contract the following appears: (Emphasis added)

Clallam County Capital Facilities Plan: The GRANTEE will review the 1994 Clallam County Capital Facilities Plan (CFP) to identify areas of potential update and revision. The 1994 CFP covers sanitary sewer treatment and collection, government buildings, **park and recreation**, flood control devices....:

Integration of Capital Facility Planning Efforts: The GRANTEE will evaluate and recommend options for ways to improve integration of the GRANTEE's capital facilities plans, policies, programs and financing. Areas of evaluation will include:

- Clallam County Capital Facilities Plan.
- Clallam County Six Year Road Improvement Program
- **Clallam County Park and Recreation Master Plan (2000-2006)...**

³⁴ IR 601

1 Furthermore, there is nothing in the contract between CTED and Clallam County which
2 references funding for **adding** park and recreation facilities to the County's CFP. There is
3 specific reference to funding intended to cover the costs of reviewing the County's CFP for
4 the purpose of identifying areas requiring update and revision, including that portion of the
5 CFP addressing park and recreation facilities. The only conclusion reasonable under the
6 circumstances is that no state funds were required to add park and recreation facilities to
7 the CFP at that time as the County already included those facilities in its CFP element. That
8 is, Clallam County had previously elected to include park and recreation facilities in its CFP,
9 arguably a County option due to the Legislature's subsequent decision to add the specific
10 reference to such facilities.
11

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13 The Record clearly establishes state funds were appropriated and distributed to cover the
14 costs to "evaluate and recommend options for ways to improve integration of the
15 GRANTEE's capital facilities plans, policies, programs and financing" and "to identify areas
16 of potential update and revision" including the park and recreation portion of the County's
17 CFP element.³⁵ There is no evidence in the Record that state funds were appropriated and
18 distributed to the County for the specific purpose of adding parks and recreation facilities to
19 the County's CFP element.³⁶
20

21
22 Finally, in regard to the inclusion of parks and recreation in the county's CFP, the Board
23 notes Futurewise's Petition for Review challenged various aspects of Clallam County's CFP,
24 including its parks plan. In the FDO, the Board referenced the 1994 Clallam County CFP as
25 it related to the Carlsborg UGA. The Board concluded Futurewise failed to carry its burden
26 of proof in regard to park facilities, noting "The Board concludes that the County can use
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30 ³⁵ IR 601, Intergovernmental Agreement Contract Number s02-63000-034, Scope of Work Attachment, pg. 4
31 ³⁶ There remains the possibility state funds were appropriated and distributed to Clallam County in years prior
32 to those covered by the Record before the Board and used by the County to incorporate parks and recreation
within the County's CFP element. (Those funds would have been distributed "at least two years before
[Clallam County] must update comprehensive plans as required by RCW 36.70A.130" in accordance with the
null and void clause of Section 9, Chapter 154, Laws of 2002.(SSHB 2697)).

1 both its county-wide CFP as well as the Carlsborg CFP to fulfill the requirements of RCW
2 36.70A.070(3)".³⁷ Clearly, the County's CFP included parks prior to the adoption of the 2002
3 amendments mandating inclusion of park and recreation facilities in jurisdictions' CFPs.

4 5 IV. CONCLUSION

6 Based on the foregoing, the Board finds and concludes that Futurewise, on the Record
7 before the Board, has failed to meet its burden of proof to establish the State, prior to
8 December 1, 2002, appropriated and distributed sufficient funds to cover Clallam County's
9 costs associated with the 2002 legislation affecting the RCW 36.70A.070(3) capital facilities
10 plan requirements.

11 Entered this 15th day of December, 2011.

12
13
14 _____
15 William Roehl, Board Member

16
17 _____
18 James McNamara, Board Member

19
20 _____
21 Nina Carter, Board Member

22 Pursuant to RCW 36.70A.300 this is a final order of the Board.³⁸

23
24 _____
25 ³⁷ FDO, April 23, 2008, pg. 106

26 ³⁸ Pursuant to RCW 36.70A.300 this is a final order of the Board.

27 Reconsideration. Pursuant to WAC 242-03-830, you have ten (10) days from the date of mailing of this Order to
28 file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any
29 argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original
30 and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of
31 record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-03-240(1).
32 The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as
provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior
court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.
The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the
Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW
34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means

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actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.
Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

DETERMINATION ON REMAND
Case No. 07-0-0018c
December 15, 2011
Page 18 of 18

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